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No. 92-1313

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

SACRAMENTO COUNTY BOARD OF SUPERVISORS,
Petitioner,

v.

SACRAMENTO COUNTY LOCAL AGENCY
FORMATION COMMISSION, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the California Supreme Court

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does California Government Code § 57103—which provides that voters residing within the boundaries of a proposed city are the ones to vote on the question of whether the new city shall be formed—violate the equal protection clause of the fourteenth amendment?

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Pursuant to Supreme Court Rule 29.1, Respondent Citrus Heights Incorporation Project informs the Court that it is a non-profit California corporation with no affiliated entities. The Petition in this case contains a lengthy "Statement of the Case." Petition at 3-12. Much of what is contained in this statement is irrelevant to the merits of the Petition, and some of it is inaccurate. A more concise and accurate statement of the case appears at the beginning of the unanimous opinion of the California Supreme Court holding California Government

Code Section 57103 constitutional. App. to Cert. at 1a-10a.

Respondent agrees with the California Supreme Court's summary, and pursuant to Supreme Court Rule 24.2, wishes to highlight two specific disagreements with Petitioner's statement of the case. First, as Petitioner points out, under California law, the incorporation of a new city requires the approval of the incorporation by a supra-local body called a Local Agency Formation Commission (hereafter "LAFCO") *prior* to the submission of the question of incorporation to the electorate. Petition at 3-4. Sacramento County, like all other California counties, has a LAFCO. Petition at 4-5. And, as Petitioner notes, LAFCOs have "broad authority" to notify or disapprove unsatisfactory incorporation proposals. Petition at 4-5.

There are several salient omissions from Petitioner's recitation. As the California Supreme Court noted, Sacramento County is one of only four counties to have a larger, seven-member LAFCO. App. to Cert. at 6a. Two of the LAFCO members represent the County, two represent existing Sacramento County cities, two others come from other governmental units in the County, and one other is a member of the general public appointed by the other six. App. to Cert. at 6a. LAFCOs have limited discretion in approving incorporation petitions. Before a LAFCO does so, it must conduct a comprehensive fiscal analysis of the proposed incorporation, consider public hearing testimony and otherwise consider "a multitude of factors." App. to Cert. at 7a-8a. One of these factors is "the effect of the proposed action . . . on adjacent areas." App. to Cert. at 8a.

At trial, one of the Petitioner's claims was that LAFCO abused its discretion by failing to consider these statutory criteria, including—of importance here—an asserted failue to consider the financial impact of the Citrus Heights Incorporation on other county residents. The

trial court, after considering the evidence, ruled against the Petitioner on this point stating:

> the Court has examined the question of whether or not there was any abuse of discretion for failure to preserve revenue neutrality in this matter. And the Court is satisfied that there is evidence insufficient for that purpose. App. to Cert. at 81a.

This portion of the judgment, including this finding, was not appealed. App. to Cert. at 29a (describing appellate posture of the case).

As will appear, this is a matter of no small consequence. Petitioner is desperate to portray the citizens of the rest of Sacramento County as "fenced out" of the incorporation process to their detriment. Petition at 28. But a more complete recitation reveals that LAFCOs are charged with protecting the interests of other county residents and that there is, in this case, an unchallenged judicial determination that LAFCO fulfilled its role. Thus, while Petitioner is anxious to focus solely on the election, this focus is misplaced. As the California Supreme Court put the matter:

> the voters' role under [California law] is rather like that of the masons who place a keystone at the apex of a high and intricate arch. The voters' approval is an essential piece, but as we have shown, by the time the question reaches the electorate the incorporation proposal will have undergone a labyrinthine process containing elaborate safeguards designed to protect the political and economic interests of affected local governments, residents and landowners. App. to Cert. at 10a.

CHIP's second major point of disagreement centers on Petitioner's representations of the fiscal impact of the incorporation proposal. Petitioner quotes a figure of a total impact of about $3.7 million, although it notes in a footnote that this figure in error since it comes *not* from the proposal that LAFCO actually approved, but from an earlier version. Petition at 6. As the California Supreme

Court suggested, it is doubtful that the specific fiscal projections are of constitutional consequence. App. to Cert. at 23a. But it nonetheless bears pointing out that Petitioner's figure is purely fictional. Reviewing the record, a unanimous California Supreme Court found that "the facts of this case do not belie any unusual financial detriment." App. to Cert. at 23a. The California high court further found that the impact amounted to about $5 per county resident annually, and was less than 1% of the Sacramento County budget, even using Petitioner's figures. App. to Cert. at 23a-24a. Petitioner does not attempt to demonstrate that the California Supreme Court's findings are in error, nor could it do so.

SUMMARY OF ARGUMENT

California Government Code § 57103 provides that in elections regarding the creation of a new city the residents of the proposed city vote on the matter. Petitioner asserts that this common-sense arrangement violates the equal protection clause, but it clearly does not. The decisions of this Court that bear on this matter are *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60 (1978). *Lockport v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259 (1977) and *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907). *Holt*, *Lockport* and *Hunter* make clear that a State's decision to draw voting lines along municipal lines merits only deferential "rational basis" review. The California statute obviously survives such review and Petitioner does not contend otherwise.

None of the decisions cited by Petitioner involve geographic limitations. They all involve limitations of the franchise on such bases as race and property ownership. In fact, the case that Petitioner specifically claims is in "conflict" with the persuasive and unanimous opinion of the California Supreme Court below actually involves a limitation of the franchise to persons not employees of the military.

The opinion of the California Supreme Court is consistent with the decisions of other courts. There is no conflict in the authority. In fact, 32 states have statutes functionally identical to California's, so that is no conflict in State practice. The writ should be denied.

ARGUMENT

The Petition is long on generalities, short on specifics. This is understandable, because Petitioner has no authorities even remotely analogous to this case to support its remarkable assertion that the California incorporation statute is unconstitutional. Petitioner's argument was rejected by a unanimous California Supreme Court, is foreclosed by the decisions of this Court and finds no support in either lower court opinions or the practices of the other States.

I. DECISIONS OF THIS COURT DEMONSTRATE THE STATUTE'S CONSTITUTIONALITY

Perhaps the best indication of the weakness of Petitioner's legal argument is its asserted justification for granting the writ. Petitioner asserts that the writ should be granted because the California Supreme Court's decision "is in conflict with this Court's opinion in *Carrington v. Rash*, 380 U.S. 89 (1965)." Petition at 12. From this, the uninitiated reader might anticipate that *Carrington* deals with a factual situation similar to the one at hand here. But, as it turns out, *Carrington* has little, if anything, to do with this case.

Carrington dealt with a Texas state law discriminating against military personnel with regard to voting eligibility. The rather bizarre—or at least "unique," *id.* at 91—Texas provision provided that a person must retain his or voting domicile on entry into military service until termination of the relationship with the service. *Id.* at 91-92. This Court held that this was unconstitu-

tional discrimination against those who wear "the uniform of our country." *Id.* at 97.

Carrington has nothing to do with this case. This Court did not purport to question the legitimacy of geographical limitations on voting. Quite to the contrary, the *Carrington* majority stated: "We stress—and this is a theme to be reiterated—that Texas has the right to require that all military personnel enrolled to vote *be bona fide residents of the community.*" *Id.* at 93-94 (emphasis added). This, of course, is what the California statute does. In common-sense fashion, it provides that those who vote on whether a community is to become is to become a city "be bona fide residents of the community." It makes no restrictions. It does not discriminate against military personnel or any other class of adult citizens. And contrary to the Petition's outlandish assertion, the California statute certainly does not discriminate against voters "on the basis of how they may vote." Petition at i.

Having disposed of the case that Petitioner evidently regards as the primary support for its position, let us turn to this Court's decisions that actually relate to the case at hand. *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60 (1978) involved an Alabama statute giving "police jurisdiction" to incorporated cities extending three miles beyond their boundaries. This statute gave Alabama cities a wide array of powers beyond their borders, including enforcement of police and sanitary restrictions, business and professional restrictions, and extension of the city's criminal court jurisdiction. *Id.* at 60-61. Additionally, the Alabama statute allowed the cities to collect license fees from the borderland residents up to 50% of the normal amount. *Id.* at 62.

The borderland residents sued, claiming that the Alabama statute violated equal protection by denying them the right to vote in municipal elections. This Court rejected the constitutional challenge. This Court empha-

sized that it has upheld constitutional challenges to voting schemes only if they "deny the franchise to individuals who were physically resident with the geographical boundaries of the governmental entity concerned." *Id.* at 68. But, as this Court held, the Alabama statute did no such thing. The majority noted that municipal activities almost inevitably have influence beyond their borders. *Id.* at 69. "Yet no one would suggest that nonresidents likely to be affected by this sort of municipal action have a constitutional right to participate in the political processes bringing it about." *Id.*

These "indirect extraterritorial effects," *id.* at 70, were insufficient to bring the borderland residents within the presumptive franchise of municipal elections. As long as the "line . . . coincides with the geographical boundary of the governmental unit at issue" the majority concluded that only "rational basis" review was indicated, and rejected the constitutional attack under that standard. *Id.* at 70-75.

Petitioner is understandably reluctant to deal with *Holt* and thus mentions it only in passing. Petition at 8, 21, 25. But if the challenge to the Alabama scheme failed, it is impossible to see how this challenge can succeed. In contrast to the substantial effects of the Alabama statute—financial and otherwise—the effect of incorporation on residents of the rest of unincorporated Sacremento County is at most financial, and, as the California Supreme Court found, slight and "not . . . unusual." App. to Cert. at 23a-24a. Moreover, the California statute goes to great lengths to protect the interests of non-residents, lengths not pursued in the Alabama statute. As noted above, before any incorporation proposal goes to ballot it must be approved by a LAFCO. LAFCOs must consider effects, financial and otherwise, on non-residents, and counties are heavily represented on LAFCOs, and especially so on the Sacramento County LAFCO. There is an unchallenged judicial

finding that LAFCO performed its statutory duties in this case.

Holt thus makes two things perfectly clear. The first is that geographical restrictions on voting that follow municipal lines are subject only to rational basis review; the second is that voting schemes that do not exclude any class of adults within those boundaries easily survive constitutional review. All of this makes obvious that the case for constitutionality here is even stronger than it was in *Holt*.

Holt was preceded by *Lockport v. Citizens for Community Action at the Local Level, Inc.*, 430 U.S. 259 (1977). *Lockport* is fully consistent with *Holt*'s approach. In *Lockport* this Court considered an attack on a New York statute that required concurrent majorities of city and non-city dwellers to approve a change in county charters. The charter at issue was rejected by a narrow margin of the non-city dwellers but approved by a substantial majority of city dwellers and thus carried in the county as a whole. *Id.* at 262.

This Court concluded that there was no constitutional violation in New York's refusal to allow the charter to take effect. A unanimous court began its analysis by examining the threshold question of whether New York could justify the differing treatment of city and non-city dwellers. This Court concluded that the statute appropriately recognized that "the real and long-term impact of a restructuring of local government is felt quite differently by different county constituent units. . . ." *Id.* at 272. "The provisions of the New York law . . . do no more than recognize the realities of these substantially differing electoral interests. *Id.* Employing deferential review, this Court thus upheld the statute.

Just as the *Lockport* statute recognized differing interests, the California statute does too. The proposition that the interests of those within the borders of the proposed

city have a materially greater interest than those outside is too obvious for extended discussion. Those residing in the new city will feel the force of its regulatory authority and otherwise be subjected to its direct influence. This influence is of a different order of magnitude than the slight and "not . . . unusual," App. to Cert. at 23a-24a, financial effect outside the city's borders. As the California Supreme Court once noted: "It is the residents of a region . . . who as a class are most concerned with its government." *Curtis v. Board of Supervisors*, 7 Cal.3d 942, 962, 501 P.2d 537, 104 Cal.Rptr. 297 (1972). The California statute does nothing more than recognize this truism. For those inside the new city's borders, the statute mandates an election before they can be subjected to the city's authority. For those outside the city, the statute protects them by requiring LAFCOs to consider their interests and mandating county representation on that body.

The lineal ancestor of both *Lockport* and *Holt* is *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907). At issue in *Hunter* was a Pennsylvania statute allowing a consolidation of the cities of Pittsburgh and Allegheny upon a combined majority vote in the two cities. Consolidation passed in Pittsburgh, lost in Allegheny, but carried overall. This Court sustained the consolidation against constitutional attack, stating that municipal powers rest in "the absolute discretion of the State" and that a State may "at its pleasure modify or withdraw all such powers." *Id.* at 178.

It is doubtless true, as the California high court recognized here, that this language in *Hunter* "bespeaks the judicial confidence of a simpler era." App. to Cert. at 14a. But it is equally clear that this Court continues to find *Hunter* instructive in the equal protection context. In *Holt*, for instance, the majority noted that although the *Hunter* language quoted above had been qualified by later cases, "the case continues to have substantial con-

stitutional significance in emphasizing the extraordinarily wide latitude that States have in creating various types of political subdivisions and conferring authority upon them." *Id.* at 71.

The simple message of *Holt*, *Lockport* and *Hunter*—a message that Petitioner tries mightily not to hear—is that drawing the limits of the franchise along municipal lines suggests no constitutional violation and triggers only minimal scrutiny under the equal protection clause. This Court has given States great, and appropriate, deference in formulating their internal workings.

None of the cases that Petitioner cites undercut this tradition of deferential review. In fact, aside from *Holt*, *Lockport* and *Hunter*, none of the cases that Petitioner discusses even deal with geographical restrictions on a voting franchise. *Carrington*, *supra*, 380 U.S. 89, as noted above, dealt with discrimination against persons employed by the military. *Phoenix v. Kolodziejski*, 399 U.S. 201 (1970) and *Cipriano v. City of Houma*, 395 U.S. 701 (1969) both dealt with a restriction of the franchise to real property taxpayers in revenue bond elections. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) dealt with a redrawing of municipal borders in such a way as to intentionally exclude African-American voters. *Kramer v. Union Free School District*, 395 U.S. 621 (1969) dealt with a limitation of the franchise to real property taxpayers and parents of schoolchildren in school elections. *Rosario v. Rockefeller*, 410 U.S. 752 (1972) and *Kusper v. Pontikes*, 414 U.S. 51 (1973) both dealt with State laws designed to "lock in" persons to a party affiliation for purposes of voting in primaries. *Evans v. Common*, 398 U.S. 419 (1969) dealt with a state statute forbidding patients at a federally-run mental hospital from voting.

The point is that all of these cases involve restrictions that exclude some class of adults *resident within* the

relevant boundaries from voting. In *Kramer* it was non-parents and non-real property taxpayers, in *Gomillion* it was African-Americans, in *Carrington* it was military personnel, and so on.

At the risk of repetition, the California statute does not work this way at all. It allows all adults—African-American and white, parents and singles, real property owners and non-owners—to vote as long as they live within the relevant borders. The statute simply recognizes that persons on different sides of municipal lines have differing interests, and *Lockport*, *Holt* and *Hunter* make clear that States are entitled to wide latitude in weighing those interests. California has chosen a rational approach in its scheme, and there is no reason to disturb this judgment. As this Court once observed, government "is the science of experiment." *Anderson v. Dunn*, 6 Wheat. 204, 226 (1821). Petitioner quite evidently does not find the California experiment to its liking, but there is no reason to believe it constitutionally infirm.

II. DECISIONS OF LOWER COURTS DEMONSTRATE THE STATUTE'S CONSTITUTIONALITY

The message of these cases is lost on Petitioner, but not on lower courts. A review of the decisions of lower courts facing similar issues reveals that they are in accord with the California Supreme Court's excellent opinion in this case.

In *St. Louis v. The City of Town and Country*, 590 F. Supp. 731 (E.D. Mo. 1984) the district court considered a situation exactly analogous to the one at hand here. Missouri law allowed for the annexation of unincorporated portions of the county to existing municipalities. Residents in the unincorporated and unannexed portion of the county sued claiming that the ensuing "loss of government revenue" to the county gave them the right to vote on annexation matters. *Id.* at 736. The district

court rejected this contention and upheld the voting scheme under rational basis review. *Id.* at 737.

In *Provance v. Shawnee Mission Unified School Dist. No. 512*, 231 Kan. 636, 648 P.2d 710 (1982), the Kansas Supreme Court considered and rejected an argument much like the one raised here by Petitioner. In *Provance* a Kansas statute required a vote on the issue of a school closing only within the geographical subdistrict in which the school was located. A resident of the school district, but not the subdistrict, challenged the statute arguing that the financial interdependence of the district necessitated a district-wide vote. Citing *Holt* and *Lockport*, the Kansas high court applied minimal scrutiny and rejected the challenge.

In *Moorman v. Wood*, 504 F. Supp. 467 (E.D. Ky. 1980) the district court faced a Kentucky statute that allowed only the residents of a de-annexing portion of a city to vote on whether to annex to another city. The district court upheld this statute against constitutional attack. The court employed rational basis review and expressly endorsed the right of the State to "experiment." *Id.* at 477. Nearly the same problem was faced by the Alabama Supreme Court when it considered whether the State could limit the franchise in an annexation election to the residents of the annexing area. *Givorns v. City of Valley*, 598 So. 2d 1338 (Ala. 1992). Citing *Holt*, the Alabama high court upheld the statute under the rational basis test. *Id.* at 1340.

At least three district courts have faced the question of whether the franchise on an annexation can be withheld from those in the annexed territory, thus effectively giving the city the right to "unilaterally" annex adjacent areas. All three decisions, one of which was summarily affirmed by this Court, employed deferential review and sustained the statutes against constitutional attack. *See Murphy v. Kansas City*, 347 F. Supp. 837 (W.D. Mo. 1972); *Thompson v. Whitley*, 344 F. Supp. 480 (E.D.

N.C. 1972); *Adams v. City of Colorado Springs*, 308 F. Supp. 1397 (D. Colo.), *aff'd*, 399 U.S. 901 (1970).

The message from the lower courts could not be clearer. Lower courts have understood *Holt*, *Lockport* and *Hunter* to mandate deferential review in circumstances like the case at hand. The California Supreme Court's unanimous opinion is in line with these decisions and this provides an additional reason to deny the writ.

III. STATE PRACTICE ALLOWS A CITY-WIDE VOTE

The uniform practice among the States is to allow only the residents of a proposed city, town or village to vote on the matter of its incorporation. In *Carrington*, *supra*, 380 U.S. 89, 91-92—the case relied upon so heavily by Petitioner—this Court referred to the "unique" nature of the Texas statute, and bolstered its analysis by a comparative review of other State practices. More recently, this Court has emphasized that the prevalence of a practice is a factor in assessing its constitutionality. *Cf. Burnham v. Superior Court*, 495 U.S. 604, 615 (1990) (continuing use "in a substantial number of the States" of the rule of in-state service to establish in personam jurisdiction is a factor tending to show its constitutionality); *id.* at 627 (White, J., concurring in part and concurring in the judgment) (in-state service is "so widely accepted throughout this country that I could not possibly strike it down"); *id.* at 658 (Stevens, J., concurring in the judgment) (wide acceptance of the practice a factor in making its validity an "easy case").

At least 32 States provide for incorporation elections. *All* of the 32 States—including, of course, California—limit the franchise to voters residing within the boundaries of the proposed municipality. *See* Ala. Code § 11-41-3 (franchise limited to those who have "resided within" the proposed boundaries for three months . . .); Alaska Stat. § 29.05.110 (voter must be "resident within" the proposed boundaries for 30 days); Ariz. Rev. Stat. Ann.

§ 9-101 ("only qualified electors of the community shall vote on the question"); Colo. Rev. Stat. § 31-2-102 (franchise extends to "all the registered voters residing within the territory"); Ill. Rev. Stat., ch. 24, § 2-3-6 (matter to be submitted to "the electors of such area"); Iowa Code § 368.19 ("qualified electors of the territory or city may vote"); La. Rev. Stat. 33:3(B) ("All of the qualified electors residing within the area proposed for incorporation shall be entitled to vote."); Md. Code Ann. art. 23A, § 25 ("the question of incorporation under the proposed charter shall be submitted to the registered voters of the area proposed to be incorporated"); Mass. Const. Amend. Art II, § 3 (adoption of charter must be submitted "to the voters of the city or town"); Mich. Comp. Laws § 123.1010 ("a referendum on the question of incororation to be held in the area approved for incorporation"); Nev. Rev. Stat. § 266.016 (eligible voter is "a person registered to vote in this state and is a resident of the area to be included in the proposed city"); N.M. Stat. Ann. § 3-2-6(E) ("Any registered voter who is a resident of the territory proposed to be incorporated may vote on the question of incorporating the territory as a municipality."); N.Y. Village Law § 2-216 ("Each resident in such territory qualified to vote for town officers may vote at such election."); N.D. Century Code § 40-02-06 (election to be held "within the boundaries of the proposed municipality"); Ohio Rev. Code Ann. § 707.30 (D) ("Every elector residing in the territory sought to be incorporated under the petition shall be permitted to vote."); 11 Okla. Stat. § 3-102 (election held by "submitting to the registered voters of the proposed town the question of whether or not such territory shall become an incorporated town"); Or. Rev. Stat. § 221.050(1) ("The county court shall submit the proposition for incorporation . . . to the electors registered in the area to be incorporated"); 53 Penn. Stats. § 35202 (question of incorporation to be submitted "to the qualified electors thereof"); R.I. Const. art. 13, § 7 (charter must be

approved by "the electors of the city or town qualified to vote"; § 45-2-1 of the Rhode Island Code allows for city formation only by adoption of a charter); S.C. Code Ann. § 5-1-50 (election held among "all registered voters living in the area sought to be incorporated"); S.D. Codified Laws § 9-3-6 (incorporation requires "the assent of the qualified voters thereof"); Tenn. Code Ann. § 6-1-204 (a) ("All registered voters of the municipality or of the territory of the proposed municipality are eligible to vote in the election."); Tex. Local Gov't Code Ann. § 7.006 ("Each qualified voter who resides within the boundaries of the proposed municipality may vote at the election."); Utah Code Ann. § 10-2-101.5 (petition for incorporation must call for submission "to the legal voters resident within the territory described, for their approval or rejection at a special election"); Wash. Rev. Code § 35.090 ("No person is entitled to vote thereat unless he or she is a qualified voter . . . and has resided within the limits of the proposed city or town for at least 30 days"); W. Va. Code § 8-2-6 ("each qualified elector of the territory sought to be incorporated shall have the right to cast his vote for or against such incorporation"); Wis. Stat. § 66.018 (incorporating by reference § 66.021(5)'s requirement that election be "a referendum of the electors residing in the area"); Wyo. Stat. § 15-1-205(b)(i) ("an election of all qualified electors residing within the territory").

The Petition cites statutes from 15 states granting the franchise both to the detaching and remaining area of a city in the context of municipal *detachment*. Petition at 10, n. 6. This is of no relevance for several reasons. First, as we have seen, the *universal* practice among the States on *this* issue—incorporation of a new municipality—is to require a vote only within the boundaries of the new city. In fact, most of the States to which Petitioner refers have statutes specifically confining the franchise in *incorporations* to the borders of the new city.

Second, detachments are a very different matter. By incorporating, a new municipality does not "secede" from the county in which it lies. As the trial court pointed out, the proponents of the Citrus Heights incorporation are attempting to create a new *city*, not a new *county*. App. to Cert. at 83a. And the trial court could "not find that the City of Citrus Heights is seceding from the County of Sacramento. . . ." App. to Cert. at 83a. Thus, even granting Petitioner its doubtful premise that there is a widespread practice of granting a broader franchise in cases of municipal detachments, it is clear that this is not such a case, and that in the *formation* of new cities the *universal* practice is to limit the franchise to the borders of the new city.

Third, even assuming that States often grant a broader franchise is detachments, this is simply a policy choice. It is clear that States are under no constitutional comsion to do so, *see, e.g., Moorman v. Wood*, 504 F. Supp. 467 (E.D. Ky. 1980), and indeed the Petition cites statutes from many States that limit the franchise to the detaching area. Petition at 10, n. 6.

In the final analysis, then, there is nothing to suggest that any United States election on the incorporation of a new city *ever* involved a county-wide vote. The decisions of this Court do not require such a vote, the decisions of the lower courts reject any suggestion that such an election is constitutionally-compelled, and the 32 states that provide for incorporation elections *all* limit the franchise to the voters residing within the proposed city.

CONCLUSION

Granting this petition would serve no purpose. The decisions of this Court are clear and reject Petitioner's contentions. The decisions of the lower courts, including the persuasive and unanimous opinion of the California Supreme Court below, are not in conflict and universally reject Petitioner's position. Thirty-two of our Nation's

states have statutes like California's, and no State has extended the franchise in incorporation elections in the way that Petitioner suggests is constitutionally-mandated. For these reasons, this Court should deny the petition for certiorari.

Respectfully submitted,

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